IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 34 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPALBHAI PARSHOTTAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 34 of 2002

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/02/2002

ORAL JUDGEMENT

The petitioner is an accused in connection with offences punishable under Sections 120B, 408, 409, 420,

421, 464, 465, 467, 468, 471, 472, 477, 477A of IPC read with Sections 5 and 7 of the Damages of Public Properties Act, in Eqnuiry Case No. 20/01 pending before JMFC, Amod. Learned JMFC sent the case for Police investigation and report under Section 156(3) of Cr.P.C and it is registered as M Case No. 9/01 with Amod Police Station. The petitioner had obtained anticipatory bail from this Court and accordingly on his arrest on Jan. 2, 2002, he was released on bail. Thereafter on 5.1.2002, an application was preferred by the investigating agency for grant of remand to Police custody for seven days. Learned JMFC by a speaking order dated January 7, 2002, granted the application and remanded Police custody for four days i.e. upto 18 hours on 11.2.2002. Aggrieved by the said order, the petitioner has approached with a Criminal Revision Application No.3/02 to the Sessions Court. The Sessions Court, by a judgement and order dated 10.1.2002, rejected the revision application. The petitioner is therefore before this Court with this petition seeking reliefs.

2. Learned Advocate Mr. Patel appearing for the petitioner submitted that both the Courts below have granted Police remand inspite of observing that Police remand cannot be granted for recovery of the amount, as the matter is subjudice before the Gujarat Co-operative Tribunal and a stay against recovery is granted. Mr. Patel also submitted that an enquiry was held by an Enquiry Officer appointed by the Registrar, Co-operative Societies, Gandhinagar, who in his report has clearly stated that there is no mis-appropriation on the part of the petitioner and despite these obseravations, remand is granted only to facilitate the investigation at Ahmedabad. Mr. Patel submitted that learned JMFC had granted remand to the Police custody only on the ground that the petitioner is member of the Managing Committee and he is therefore equally responsible for the transactions that were entered into. Mr. Patel submitted that learned JMFC had granted Police remand on the grounds which are legally not valid and the petition may therefore be allowed.

3. Learned AGP Mr. S.S.Patel has opposed to this petition.

4. Having regard to the contentions raised before this Court, on going through the order of learned JMFC, it is found that remand was sought on the ground that money is to be recovered from the accused - petitioner and some investigation is to be made at Ahmedabad in respect of a loan obtained from Gujarat State

Co-operative Bank at Ahmedabad. Learned JMFC observed that the remand cannot be granted for recovery of the amount for the reason that there is a stay operating against recovery by virtue of an order passed by Gujarat Co-operative Tribunal. Learned JMFC also observed that the enquiry report also does not indicate that any mis-appropriation was committed by the present petitioner. In view of this, grant of Police remand for making some enquiry at Ahmedabad in respect of some loan obtained by the society from Gujarat State Co-operative Bank cannot be considered as proper ground, particularly when the Chairman and Vice-Chairman and Managing Director undisputedly were not granted Police remand. Both the courts below have over-looked this aspect and therefore this Court is inclined to interfere with the order by allowing this petition.

5. The petition is therefore, allowed. Order dated 7.1.2002 passed by the learned JMFC, Amod (Annexure "A") and order dated 10.1.2002 passed by the learned Additional Sessions Judge, Bharuch in Criminal Revision Application No. 3/2002 (Annexure "B") both are hereby quashed and set aside. Rule made absolute. Direct service of the operative part of this order is permitted today.

(A.L.Dave, J.)

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